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P91-11

THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

TO: Members of the Operations Committee

DATE: September 27, 1991

RE: "Study of the Current Use of Letters of Permission by Ontario School Boards"

On May 14, 1991, OPSBA received, from the Ministry of Education, a report by L. Morris Richardson, "Study of the Current Use of Letters of Permission by Ontario School Boards" requesting comments on the recommendations contained in the report.

Further, the Ministry of Education, requested a response by June 30, 1991. Because of the significant implications of several of the recommendations contained in the report, staff prepared and submitted a response by the required date. Staff did indicate that OPSBA reserved the right to provide further input, if required, following a review by the Board of Directors.

Please find attached OPSBA's submission to the Ministry of Education, for discussion.

It is recommended that:

THE OPERATIONS COMMITTEE RECEIVE THE "RESPONSE TO THE MINISTRY OF EDUCATION - CURRENT USE OF LETTERS OF PERMISSION BY ONTARIO SCHOOL BOARDS";

THE OPERATIONS COMMITTEE REFER THE REPORT TO THE BOARD OF DIRECTORS FOR APPROVAL.

Respectfully submitted,

A. Janet Beer,
Director of Labour Relations and Research.

Penny Moss,
Executive Director.

THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

RESPONSE TO

STUDY OF THE CURRENT USE OF LETTERS OF PERMISSION BY ONTARIO SCHOOL BOARDS

by

L. MORRIS RICHARDSON

Study provided to the Ministry of Education, April, 1991

June, 1991

PREAMBLE:

The following is provided by the Ontario Public School Boards' Association to respond to issues raised in the document entitled "Study of the Current Use of Letters of Permission by Ontario School Boards", conducted by L. Morris Richardson to the Ministry of Education in April, 1991. OPSBA welcomes the opportunity to respond and provide input on this document.

As referenced in our responses to the recommendations, OPSBA concurs with several revisions to the regulations governing Letters of Permission. There are, however, some issues and statements within the study that cause us concern. We have attempted to address these concerns in the same order as they appear in the study.

OPSBA requests the opportunity to further respond to recommended amendments to the regulations once the Ministry of Education has had an opportunity to consider this, and other submissions, with respect to this study.

AREAS OF CONCERN:

The report is not clear as to the origin of this study or if the study was requisitionned by a specific group. The author references in his introductory remarks (Page 1, third paragraph), "Due to the short period of time allocated for the study, it was not practical to survey all of the school boards in the province." As a result, the Boards referenced include large Central Region boards with the exception of two smaller Separate School Boards in the Eastern region. OPSBA believes that some of the proposed recommendations has significant impact on all regions of the Province and that all jurisdictions must be considered prior to any amendments to the regulations. For example, it is of interest to note that the Northern Regions have requested the majority of Letters of

Permission for teaching positions, versus the high number of Letters of Permission being granted for supply or temporary teaching elsewhere in the Province. Therefore, included but not limited to, the issues raised, "Recommendation 8" will place significant restraints, if not make it impossible for school boards in the process of staffing their schools.

Central Region Data - The study does support and confirm that the majority of Letters of Permission granted are in this region. Clearly, a number of recommendations within the study will assist with the concerns the author raises. OPSBA does not believe, however, that amendments which will constrain other jurisdictions should be included. It is recommended that the Ministry of Education consider amendments to facilitate the process, and within an appropriate period of time, re-examine the impact prior to enacting amendments to which we have raised concerns. In our opinion, there are other issues which have not been dealt with substantially within this study.

As the study would indicate, approximately 72% of the Letters of Permission granted in 1990 to 1 February 1991 have been in the Central Region, approximately 59% of those to separate schools. The author references the following circumstances as contributing to the high number of requests for the issuance of Letters of Permission including teacher shortages in the areas of French and Technical Studies programs and the religious requirement including a pastoral letter in the separate school system. These factors support OPSBA's position with respect to certain recommendations.

Section 14.2, Page 51. OPSBA does not agree with the authors reference in paragraph 1 with respect to Regulation 262 - Section 22 (3) which states, "it is now either being ignored completely by school boards or misused from its original intention". The fact that the Ministry of Education forwarded a memorandum to clarify this section would suggest that a significant number of enquires and or concerns with respect to Regulation 262 were received and required the clarification by the Ministry offices as referenced in the report.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION 1:

THAT Regulation 269, Section 49 - 1. (a) be amended to read:

(a) (i) the board has advertised at least three times in a daily newspaper, a position for which a teacher is required under the regulation, at least one of these advertisements shall be in a newspaper having provincial circulation in Ontario;

OPSBA concurs with the proposed revision to Section 49 (a) (i) for those reasons as referred to in the report.

(a) (ii) notwithstanding 1.(a)(i), a board may advertise through an electronic communication data centre with provincial accessibility, the requirement to advertise provincially for a position which a teacher is required under this regulation."

OPSBA concurs with the addition of a provision that an alternative method to advertise or communicate provincially for qualified teachers be made available to school boards. However, the provision should not be restrictive with respect to the identification of a specific process or service. The criteria should establish parameters to ensure that the intent of Section 49 (a) have been met and allow for alternative processes.

RECOMMENDATION 2:

THAT Regulation 269, Section 49 (b) be retained as revised February 7, 1991, provided an appropriate amendment is made to Sub-section 2 (b) (ii).

OPSBA agrees that Section 49 (b) should be retained as revised February 7, 1991. Please refer to Recommendation 6 with respect to amendments to sub-section 2 (b) (ii).

RECOMMENDATION 3:

THAT Regulation 269 - Section 49 (1) (c) be retained.

OPSBA concurs with the recommendation.

RECOMMENDATION 4:

THAT Regulation 269 - Section 49, Subsection 1(d) be amended to read:

(d) no qualified teacher has applied for the position or no qualified teacher who has applied for the position has accepted it.

OPSBA supports the proposed revision to Section 49 1. (d) for the reasons stated. A further amendment should be added to include "suitable, qualified and capable" which would more accurately reflect the concerns expressed, specifically in the areas of past-performance, evaluation, etc. This issue is specific in the report as referenced at page 24, where the mid-Northern Region raises serious concerns that teachers released from other Boards must be accepted under the current provisions of the regulations. (See Recommendation 5).

RECOMMENDATION 5:

THAT Regulation 269 - Form 7 and 7a - Application for Letter of Permission, be amended to include:

> **"If a qualified teacher has applied for the position, state reasons for not hiring the applicant."**

OPSBA does not agree with this recommendation.

Recommendation 4 proposes, in effect, that a Board be allowed to reject an applicant if he or she is not qualified. The Board could seek a Letter of Permission unless no qualified teacher had applied for the position, or no qualified teacher who applied for the position accepted it. Interpreted strictly, this Regulation would not allow a Board to reject an applicant unless he or she was unqualified. Consequently, the circumstances which Recommendation 5 seeks to address -- viz., the situation where a teacher, while qualified, is nevertheless rejected by the Board -- could never arise.

On the other hand, if OPSBA's alternative to Recommendation 4 is adopted, a Board would be able to reject an applicant if he or she was unqualified, unsuitable or incapable. Recommendation 5 would then have the effect of forcing the Board to state its reasons for not hiring the applicant. OPSBA does not agree with this proposal.

Form 7 or 7a relates to a specific request to obtain a Letter of Permission for a particular individual, and all the information provided by the Board relates to that person. As a matter of policy, OPSBA does not believe it is appropriate that this form be amended to require the provision of highly confidential and sensitive personal information about a second individual (i.e., a teacher who applied for the position but was rejected). Considerations of privacy dictate that if the reason for the second individual's rejection is to be documented at all, it should not be incorporated into Form 7 or 7a.

In any event, OPSBA does not agree that the reason for a particular applicant's acceptance or rejection can or should be documented. OPSBA adopts and concurs with the following statement at page 37 of Mr. Richardson's report:

> The reasons for a teacher being unacceptable are numerous including those (sic) that may have been previously terminated, are known to be emotionally or physically unsuited for the position or may not be properly qualified ...

As this passage indicates, the hiring process is a delicate one, involving numerous considerations -- some objective, others subjective. It would frequently be impossible to isolate and record the precise reason that makes an applicant unsuitable.

Further, it is possible that the requirement of documenting the reasons for an applicant's rejection might have a chilling effect on a Board's decision to reject him or her. Especially where the reason for rejection is a sensitive one (e.g., emotional unsuitability), a Director's reluctance to reduce that concern to writing could lead to the acceptance of certain applicants who would not otherwise be hired. Given teachers' important responsibility for the education of our children, OPSBA believes that where there exists any doubt about an applicant's suitability, a Board is justified in erring on the side of caution and rejecting the application. Any recommendation that might pressure a Director to do otherwise ought to be avoided.

RECOMMENDATION 6:

THAT Regulation 269 - Section 49, Sub-section 2 (b) (ii) be amended to read:

(ii) at least one of the advertisements referred to in Clause 1 (a) appeared after June 15th in the year in which the application is submitted.

Of the 3009 Letters of Permission issued in 1990 to 1 February 1991, 63% were issued for the purpose of supply or temporary teaching positions. The majority of school boards accept applications for supply or temporary teaching positions at any time during the school year. The current provision under sub-section 2 (b) (ii) is permissive in that it states "at least one of the advertisements referred to in clause (1) (a) appeared after the 30th day of April in the year in which the application is submitted" and allows advertisements at any time. Unnecessary restrictions would be placed on schooi boards should this amendment to Regulation 269 be enacted. Therefore, OPSBA does not agree with this recommendation.

RECOMMENDATION 7:

THAT Regulation 269 - Section 49 be amended to read:

(3) An appointment under this section is valid for twenty school days in the school year commencing with the day on which the person is appointed.

OPSBA concurs with recommendation 7 to allow the time required to assess the suitability of a person for a Letter of Permission or to seek a qualified teacher in the case of emergencies.

RECOMMENDATION 8:

THAT Regulation 269 - Section 49 be amended to add a new section:

> **A Letter of Permission may not be issued for more than two consecutive school years unless there is at least a three-month break in employment.**

OPSBA does not agree with recommendation 8. The intent of Letters of Permission and the processes established to seek a qualified teacher presume that a Letter of Permission will be issued when no other option is available. The study recommends alternative methods of search for qualified teachers and suggests that qualified teachers are available. The statistics, however, suggest extreme difficulty on the part of school boards to find and hire these teachers under current regulations which are strict. The proposed addition to this portion of Section 49 will create major difficulties for school boards in their staffing of programs. Until such time as an alternative method is proven to be successful in attaining qualified teachers, this revision should not be enacted.

RECOMMENDATION 9:

THAT the Ministry of Education contract an appropriate company to establish a central registry for unemployed teachers.

RECOMMENDATION 10:

THAT the contract for the establishment of a central registry for unemployed teachers be granted to cover two school year periods.

RECOMMENDATION 11:

THAT faculties of education, school boards and teacher federations participate with the central registry contractor and the Ministry of Education in developing a registry for unemployed teachers.

With the requested revisions to the regulations, alternative processes could be made available to school boards to assist in the search and recruitment of qualified teachers. OPSBA would support an alternative method available to school boards to facilitate this process. Each individual board, however, must retain the decision making process at the local level of its participation in such a process. Prior to the establishment of a central data bank or alternative method, and based on the parameters established, OPSBA would request the opportunity to discuss, with its member boards, the issues surrounding such a process and further consultation of the specifications which would make such a system viable.

RECOMMENDATION 12:

THAT graduates from faculties of education who have successfully completed their sessional program, be deemed to hold a qualification to teach during the period they are waiting to receive their Ontario Teacher's Record Card.

OPSBA concurs with recommendation 12. In some jurisdictions the unions representing supply or temporary teachers have taken the position that, until the Ontario Teaching Certificate is received, those persons are not considered qualified or eligible for the purposes of employment by the Board. Therefore, these teachers appear either on a separate list or the unqualified list for the months of May and June of a given year. This may necessitate a school board using a Letter of Permission versus a qualified teacher in supply or temporary positions, and in some cases, long term supply teaching positions.

RECOMMENDATION 13:

THAT the faculties of education, in conjunction with the appropriate Ministry and the Ontario Teacher's Federation, establish programs of short duration, for suitable candidates who have not been successful in their application to enter a faculty of education.

The completion of such a program would allow them to act as supply teachers without the twenty-day emergency provision of Regulation 262 taking effect.

OPSBA would agree to recommendation if the assumption is that those successfully completing the established programs would be issued a Letter of Permission and that the

established regulations and policies and practises established by individual boards would apply. In some jurisdictions, it has been necessary to place persons on Letters of Permission in long-term occasional teaching positions, e.g. French. If a Letter of Permission was issued, the exemption from Regulation 262 would not be required.

RECOMMENDATION 14:

THAT consideration be given to instituting teacher education Summer intersessional programs which would lead to an Ontario Teacher's Certificate with qualifications to teach in French language schools and intersessional programs for applicants prepared to qualify for French as a Second Language and French Immersion Teaching.

RECOMMENDATION 15:

THAT the faculties of education continue to increase the places available for students in the full year program and the Summer program, until the year 2000.

OPSBA concurs with recommendations 14 and 15.

RECOMMENDATION 16:

THAT school boards not consider a qualified teacher's religious belief as grounds for rejecting an applicant when applying for a temporary or occasional teaching position.

OPSBA concurs with this recommendation and as provided for in the Education Act: see section 136-1. It should be noted that this issue does not directly affect public boards of education.

RECOMMENDATION 17:

1) **THAT an ad hoc appeal panel of one or three persons be established by the Ministry of Education to hear appeals from teachers who have been denied a position with a school board and that board has employed an unqualified teacher and received a Letter of Permission for the person to teach;**

2) **THAT the panel have the authority to receive statements of fact pertaining to the employment, from the teacher and the board;**

3) **THAT the panel have the power to hold a hearing with the same powers as an arbitrator or an arbitration board under the Labour Relations Act;**

4) **THAT the decision of the panel be referred to the Minister of Education for response to the parties.**

OPSBA does not agree with this recommendation.

This recommendation would give any applicant for a position the right to have his or her rejection litigated before a special appeals panel. In effect, it would create a substantive right -- the right to be hired -- where none exists already, and allow for its enforcement through an arbitration process.

The responsibility for hiring teachers and determining their suitability lies, and ought to lie, with Boards of Education. This responsibility is enshrined in the Education Act: see para. 12 of s. 149. OPSBA does not believe that this statutory responsibility can or should be transferred to an arbitration board by the mere amendment of Regulation 269.

Further, given that the decision to hire or reject an applicant involves a delicate balancing of considerations, both objective and subjective, it would be inappropriate to force a Board to define the merits of each decision to reject an unsuitable applicant. It is a fundamental principle of labour relations that, subject only to restrictions such as those imposed by the Human Rights Code, discretion in the hiring process must be unfettered.

Quite simply, the exercise of discretion cannot properly become the subject of arbitration. This is so not only because the supervisory officer of the Board is pedagogically trained and sensitive to pupil needs and is in the best position to determine an applicant's suitability, but also because the exercise of discretion (provided it is based on correct principles) does not lend itself to second-guessing.

To the extent that a teacher wishes "protection from biased hiring practices" (Mr. Richardson's words), it is submitted that he or she already has adequate remedies under the Human Rights Code.

OPSBA also observes that there exists absolutely no evidence that the current appeal mechanisms are inadequate. Before the introduction of any amendment(s) such as those contemplated by Recommendation 17, the Ministry ought to conduct a formal study of the appeal process, the manner and extent of its utilization, and stakeholders' assessment of its efficacy. The fact that currently few appeals are filed is not necessarily an indictment of the present process; in fact, it may indicate how well the system is working.

5. ADVERTISING REQUIREMENTS FOR LETTERS OF PERMISSION

Morris Richardson's final report on his study on Letters of Permission recommended that the regulation requirement that a board advertise at least three times in a provincially circulated daily newspaper be changed to require that only one of the three advertisements needs to be advertised in this manner.

In its discussion of the Richardson recommendation, the review committee considered the cost of provincially circulated newspaper advertisements to a school board, as well as the inclusion of other advertising possibilities such as electronic methods. The review committee proposes, therefore, that the appropriate clause be amended to require a board seeking a Letter of Permission to show evidence that a position, for which a teacher is required under the regulations, has been advertised at least three times in the media, including a least one advertisement in a newspaper with daily provincial circulation in Ontario. Further, at least one advertisement appeared not more than one month before the start of employment.

In response to recommendation 4 of the Richardson report, the committee proposes that Section 49(d) be revised so that the conditions for a board applying for a Letter of Permission are that "no teacher holding the qualifications required for the position has applied for the position, or no teacher with such qualifications has accepted it".

(The underlining indicates the proposed additional wording.)

The revised clause would assist boards to hire the most suitable candidate for a teaching position, giving preference to those holding the qualifications required and not give preference to any teacher regardless of his or her teaching qualifications.

On the basis of recommendation 5 of the Richardson study, the committee proposes that a clause be added to the Letters of Permission section which states:

> If a teacher holding qualifications required for the position has applied and not been hired for the position, the board shall explain these reasons to the applicant and shall retain the reasons on file for three years.

The addition of such a clause to the regulation would provide clarification to the unsuccessful applicant and protect the board in case of grievance.